

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Wildade Nelson
22 Kessler Farm Dr.
Suite 659
Nashua, New Hampshire 03063

CASE NO. _____

JUDGE _____

Plaintiff,
v.
Joanne McGann
In All Capacities,
and
The Commonwealth of Massachusetts
Department of Health and Human Svcs.,
Department of Mental Retardation
500 Harrison Avenue
Boston, Massachusetts 02118

JURY DEMAND

05 - 11269 NG
Referred to MJ T6 Dem

Defendants.

COMPLAINT OF PLAINTIFF, WILDADE NELSON

PARTIES AND RELEVANT BACKGROUND

1. Plaintiff is a Haitian-born woman currently residing in New Hampshire and working for Defendant at all times relevant to this Action.
2. Defendants are a duly-chartered state-owned and managed facility providing housing and other services for developmentally-challenged individuals and a certain manager by the name of Joanne McGann, who was employed at all relevant times by Defendant.
3. Plaintiff was hired in January, 2001 as a Mental Retardation Social Worker 1.

4. She commenced her employment at the central unit located at 450 Maple Street in Danvers, and remained there for nine (9) months, at which time she was sent to the Billerica facility.
5. Plaintiff served at the Billerica Facility for nine (9) more months, when she was transferred to the Tyngsboro facility.
6. Plaintiff received generally positive work reviews and was not subject to progressive discipline until Joanne McGann became her manager.
7. Plaintiff has sworn under Oath, and will again swear under Oath, that Ms. McGann called her “a stinking nigger” and told her she would not be returning to the Tyngsboro facility. See Plaintiff’s successful New Hampshire Unemployment application. **Attachment 1.**
8. Prior to such statement, but while still subject to the control of Defendant McGann, Plaintiff was subject to a series of bogus disciplinary charges including, but certainly not limited to:
 - a. improperly notifying a supervisor when a guardian wanted to remove a resident from the premises;
 - b. improperly failing to evacuate the entire building after some gravy she was cooking spilled over and burned in the oven, when other non-Haitian employee was not punished for the same alleged offense and Plaintiff directly heard Defendant McGann call the other person, who would later falsely claim that Plaintiff assaulted her, “the fire lady” because of the accident;
 - c. yelling at an unidentified man who arrived at a residence late at night and demanded to be let in;
 - d. actually assaulting another employee not of Haitian background, although there was absolutely no police call ever made to document this alleged assault, no evidence of any injuries, and Plaintiff was allowed to continue to finish her entire shift, even though she would have fairly been considered a dangerous instrumentality if she had truly assaulted anyone.

9. Defendant McGann also assigned Plaintiff to more dangerous shifts and areas, and did further assign Plaintiff to a work area that was inappropriate for her condition after she returned from internal surgery with a physician's statement that clearly stated she should not be involved in heavy lifting.
10. Defendant McGann, acting under Color of Law and in her Individual Capacity, did further cause Plaintiff to be suspended from work for a six (6) month period without pay.
11. Plaintiff filed internal complaints with the agency that never received any substantive response, in violation of Substantive and Procedural Due Process rubrics.
12. Defendants terminated Plaintiff's employment. In terminating Plaintiff's employment, Defendants failed to properly contact the appropriate union officials and did further fail to follow their own internal hearing and other procedural guidelines, further denying Plaintiff Substantive and procedural Due Process of Law.
13. Plaintiff appropriately filed and dismissed her action before the Massachusetts Commission Against Discrimination prior to filing suit in this Honorable Court.
14. Several other employees who witnessed Plaintiff's treatment at the hands of Defendants came forward to help Plaintiff prepare her internal and MCAD complaints because they noticed that she, as a Haitian woman, was being denied equal protection under the laws.
15. As the (in)actions of Defendants clearly shock the conscience of reasonable persons, Plaintiff was foreseeably injured and did seek treatment for her injuries.

CLAIMS

1. 42 U.S. Code 2000(e) – unlawful treatment by race, ethnicity and national origin.
2. M.G.L. 151(B) – wrongful discharge; unlawful contractual treatment and terms and conditions of employment by race, ethnicity and national origin.
3. 14th Amendment/42 U.S.C. 1983 – Denial of Substantive Due Process Rights.
4. 14th Amendment/42 U.S.C. 1983 – Denial of Procedural Due Process Rights.
5. Negligent infliction of emotional distress.
6. Intentional infliction of emotional distress.

DEMANDS

Plaintiff hereby demands:

1. Reinstatement with any and all lost benefits.
2. Not less than \$25,000.00 in compensatory damages.
3. Unspecified punitive damages.
4. Preliminary and Permanent Injunctive Relief as the Court deems applicable.
5. Attorney Fees in the event when I procure an attorney.
6. Any and all legal and equitable relief the Court deems applicable.

WHEREFORE,

Plaintiff submits this Complaint in all Good Faith and prays for the relief sought.

Respectfully submitted,

Wildade Nelson
Plaintiff pro se

JURY DEMAND

I, the undersigned Plaintiff, hereby request a Trial on the Merits to be heard by a Jury of applicable size and composition.

Wildade Nelson

AFFIDAVIT OF INDIGENCY

I, Wildade Nelson, under Oath and subject to Perjury, bring this case *in forma pauperis*, as I have not had substantial employment since Defendant(s) unlawfully terminated my employment.

1. I have no money in my checking account;
2. I have no savings;
3. My car was repossesed this month;
4. I have no cash on hand or friends who have enough money to initiate this Action;
5. I found a job but it is in Boston and I have no car to get to it;
6. I will pay the Court the costs of filing as soon as I get it, or at the completion of this case whichever is sooner.

FURTHER AFFIANT SAYETH NAUGHT.

Wildade Nelson

SWORN BEFORE ME THIS 1st DAY OF MAY, 2005

Christopher King
Notary Public

My Commission Expires: 19 Feb 2008.



JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DEFENDANTS

Hillsborough NH

Middlesex MA

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

05-11269 NG

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Pro Se

Peter Minno

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for (For Diversity Cases Only) and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|--------------------------------|---|--------------------------------|---|
| Citizen of This State | <input type="checkbox"/> PTF 1 | <input type="checkbox"/> DEF 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> PTF 4 | <input checked="" type="checkbox"/> DEF 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	PERSONAL PROPERTY	PROPERTY RIGHTS	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus:	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input checked="" type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 863 DIWC/DIWV (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 890 Other Statutory Actions
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Defendants treated me differently than other employees and violated Due Process

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND UNDER F.R.C.P. 23CHECK YES only if demanded in complaint:
JURY DEMAND: Yes NoVIII. RELATED CASE(S) (See instructions:
IF ANY)

JUDGE

DOCKET NUMBER

DATE

May 1 2005

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Wildude Nelson v. Juanne McGann

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740,
790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

* Also complete AO 120 or AO 121
for patent, trademark or copyright cases**05-11269 NG**

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC

INTEREST? (SEE 28 USC 2403) YES NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC

2284?

YES NO 7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL DIVISION OF THE DISTRICT OF MASSACHUSETTS (WORCESTERCOUNTY) - (SEE LOCAL RULE 40.1(C)). YES NO OR IN THE WESTERN DIVISION (BERKSHIRE, FRANKLIN, HAMDEN OR HAMPSHIRE COUNTIES)? (SEE LOCAL RULE 40.1(D)).YES NO 8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN DIVISIONS OF THE DISTRICT? YES NO (a) IF YES, IN WHICH DIVISION DOES THE PLAINTIFF RESIDE? Central9. IN WHICH DIVISION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Central10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF
THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THECENTRAL DIVISION; YES NO OR WESTERN DIVISION; YES NO 11. ALTERNATIVE DISPUTE RESOLUTION - IS THIS CASE SUITABLE FOR ADR? IF SO, BY WHICH ADR? No.EARLY NEUTRAL EVALUATION MEDIATION SUMMARY JURY/BENCH TRIAL
MINI-TRIAL OTHER

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Wildude Nelson Pro seADDRESS 22 Kessler Farm Drive Nashua NH 03063TELEPHONE NO. 603-930-4311